

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,399

IN THE MATTER OF:

Served May 10, 2010

|                                     |   |                      |
|-------------------------------------|---|----------------------|
| Petitions to Waive Regulation       | ) | Case No. MP-2010-042 |
| No. 67-03, Filed by:                | ) |                      |
| SCHROCK INC., WMATC No. 196         | ) |                      |
| MALEK INVESTMENT, INC., Trading as  | ) |                      |
| MARYLAND SHUTTLE AND SEDAN, WMATC   | ) |                      |
| No. 202                             | ) |                      |
| D & V SEDAN SERVICES INC., WMATC    | ) |                      |
| No. 1477                            | ) |                      |
| RT&T, LLC., WMATC No. 1478          | ) |                      |
| WHOLISTIC SERVICES III, INC., WMATC | ) |                      |
| No. 1509                            | ) |                      |
| WHOLISTIC SERVICES IV, INC., WMATC  | ) |                      |
| No. 1510                            | ) |                      |
| WHOLISTIC SERVICES VI, INC., WMATC  | ) |                      |
| No. 1512                            | ) |                      |
| WHOLISTIC SERVICES VII, INC., WMATC | ) |                      |
| No. 1513                            | ) |                      |
| WHOLISTIC SERVICES VIII, INC.,      | ) |                      |
| WMATC No. 1514                      | ) |                      |
| NAPOLEON TRANSPORTATION SERVICE     | ) |                      |
| LLC, WMATC No. 1516                 | ) |                      |
| WHOLISTIC DAY SERVICES, INC., WMATC | ) |                      |
| No. 1517                            | ) |                      |
| LANDJET TRANSPORTATION LLC, WMATC   | ) |                      |
| No. 1583                            | ) |                      |
| HOME LIFE HELP SERVICES, LLC, WMATC | ) |                      |
| No. 1607                            | ) |                      |

Commission Regulation No. 60-01 provides that each carrier holding a certificate of authority on the first day of the calendar year shall file an annual report on or before January 31 of that year. Regulation No. 67-02 provides that each carrier holding a certificate of authority on the first day of the calendar year shall pay an annual fee of \$150 on or before January 31 of that year. Because January 31 fell on a Sunday this year, Rule No. 7-01 extended these deadlines to Monday, February 1.

Each of the above-captioned carriers held a certificate of authority on January 1, 2010. Each failed to comply with Regulation No. 60-01 and/or Regulation No. 67-02 on or before February 1. As a result, each carrier was automatically assessed \$100 for failing to pay the fee on time and/or \$100 for failing to file the report on time. Each carrier has paid the late fee(s) and filed a petition for refund.

Under Rule No. 20-02, the Commission may consolidate two or more proceedings involving a common question of law or fact. Here, the common question is whether the Commission should waive Regulation No. 67-03 and refund the late fees paid by petitioners.

Commission Rule No. 29 provides that the Commission may waive its rules "upon the filing of a motion showing good cause." Hence, the question is whether any of these petitions shows good cause for waiving said late fees.<sup>1</sup>

After careful consideration of the grounds offered by each petition for waiving Regulation No. 67-03, we conclude that none constitutes good cause for granting the relief requested for the following reasons:

Carrier No. 196, Schrock - Petitioner was assessed a \$100 late fee for not filing its 2010 annual report until April 13, 2010. The petition addresses the timing of petitioner's annual fee but not the timing of petitioner's annual report. The annual report was late, not the annual fee.

Carrier No. 202, Malek - Petitioner was assessed \$200 in late fees for not tendering its 2010 annual report and fee until February 18, 2010. No reason is given for being tardy, and this is not the first time this carrier failed to tender its annual report and fee on time.

Carrier No. 1477, D & V - Petitioner was assessed a \$100 late fee for not filing its 2010 annual report until February 24, 2010. The petition claims the report was

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<sup>1</sup> *In re Winter Growth, Inc.*, No. MP-08-084, Order No. 11,303 (Apr. 24, 2008).

included with the annual fee tendered January 19, 2010, but the Commission has no record of this.

Carrier No. 1478, RT&T - Petitioner was assessed \$200 in late fees for not tendering its 2010 annual report and fee until February 18, 2010. The petition explains that petitioner's office help resigned in early December 2009 and took petitioner's Post Office box key. Petitioner's owner did not realize the former office worker had the key until late January 2010. Apparently, petitioner's owner did not think to check the P.O. Box for two months. This kind of ordinary negligence does not constitute grounds for refund, and the deadline for tendering the annual report and fee is set forth in Regulation Nos. 60 and 67, respectively, regardless of petitioner's P.O. Box situation.

Carrier No. 1509 - 1514, 1517, Wholistic Services III, et. al. - Petitioners were each assessed a \$100 late fee for not filing a complete 2010 annual report until March 17, 2010. Petitioners filed erroneous/incomplete reports on January 29, 2010. By letter dated February 1, 2010, the Commission notified petitioners of their failure to file acceptable returns. Petitioners did not file complete returns until six weeks later, and those returns required further correction, which did not occur until March 24, 2010.

Carrier No. 1516, Napoleon - Petitioner was assessed \$200 in late fees for not tendering its 2010 annual report and fee until February 5, 2010. The petition states that petitioner misread the annual fee invoice and mistakenly believed the May 4, 2010, automatic suspension deadline was the deadline for tendering the report and fee. A misreading of the Commission's annual fee invoice does not constitute grounds for a refund, and the deadline for tendering the annual report and fee is set forth in Regulation Nos. 60 and 67, respectively, regardless of petitioner's misreading of the invoice.

Carrier No. 1583, Landjet - Petitioner was assessed \$200 in late fees for not tendering its 2010 annual fee until February 22, 2010, and not filing its 2010 annual report until April 15, 2010. The petition states that petitioner's CEO was out of the country from November 14, 2009, until February 9, 2010. This does not explain the reason for not filing the annual report until April 15. And being out of town does not

constitute good cause for waiving the annual-fee late fee.<sup>2</sup>

Carrier No. 1607, Home Life - Petitioner was assessed \$200 in late fees for not tendering its 2010 annual report and fee until February 12, 2010. The petition states that petitioner mailed the report and fee on January 21, 2010, and received it back from the U.S. Postal Service on February 2, 2010, marked "No postage attached". Failing to put postage on the envelope and waiting 10 days to tender the report and fee after its return by the Postal Service does not constitute grounds for a refund.

THEREFORE, IT IS ORDERED:

1. That the above-captioned petitions are hereby consolidated for decision pursuant to Commission Rule No. 20-02.

2. That all petitions are denied.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND CHRISTIE:



William S. Morrow, Jr.  
Executive Director

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<sup>2</sup> *In re Hatim Awad Hamed Elfaki, t/a H and S Trans*, No. MP-07-094, Order No. 10,484 (May 10, 2007).